

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-182962

DATE: July 15, 1975

MATTER OF: Planning Research Corporation

DIGEST:

1. Where protester claims that its proposal for study contract, although offering lowest cost, was rejected based on its offer of fewer man-hours of data collection effort than indicated by Government estimate, protest is denied where record of competition indicates that Government estimate was not so used but that protester's approach to data collection was carefully considered by agency in providing protester opportunity to explain and validate its offer of substantially fewer man-hours for data collection than proposed by other offerors.
2. Award of \$589,641 cost-type contract at price \$27,349 in excess of protester's proposal to perform Highway Safety Needs Study is consistent with rule that an inferior offer may be rejected regardless of its lower price where, as here, successful offeror proposed to allocate 30,676 man-hours of effort to study contract, a total of 10,922 more man-hours than offered by protester.

Planning Research Corporation (PRC) protests the National Highway Traffic Safety Administration's (NHTSA) award to Research Triangle Institute (RTI) under solicitation No. NHTSA-5-B711 for a "Highway Safety Needs Study." PRC's principal objection to the procurement relates to the accuracy and use of NHTSA's estimate of the number of man-hours for data collection effort essential to the study.

The request for proposals (RFP) was issued on August 31, 1974, pursuant to section 225 of the Highway Safety Act of 1973, Public Law 93-86, 87 Stat. 282, which directs the Secretary of Transportation, in cooperation with Governors and appropriate State and local highway officials, to make a "full and complete study of highway safety needs and to prepare recommendations and estimates of the costs of meeting such needs." As expressed in the solicitation, the scope of the study called for is as follows:

"The Highway Safety Needs Study will focus on highway safety target areas which have high potential for impact on fatality and accident reduction. Each target area involves one or more highway safety disciplines, such as enforcement, education, etc. To obtain the necessary data for needs and cost estimates it will be necessary for the contractor to interview personnel in the various disciplines. From a State-of-the-Art survey, the Contractor will identify potentially high payoff action items (or activities) that relate to these target areas. Those activities will be screened to reject the ineffective or marginal items. The cost estimates will cover only the facilities, hardware, personnel and training necessary to implement the action items. Estimates do not include the cost for continuation of these and regular programs beyond implementation. A fundamental concept of the Federal role in highway safety is to encourage and assist the States to implement effective programs and that the expenditure of Federal funds on a State project or activity should normally not cover a period of more than 3 years. It must be assumed that current National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration priority items, 'Areas of Specific Attention Items' and 'National Emphasis Programs' respectively, will have been implemented prior to FY 1977 and should not be a principal consideration in this study. This assumption may exclude certain critical problems in a few States; therefore, data collected in this regard should be included in a separate section of the report under the heading 'additional identified needs.'"

The solicitation calls for performance in three phases: Phase I to include a state-of-the-art survey and the contractor's submission of a plan of work; Phase II to involve the design of data collection instruments, data processing programs and the conduct of a pilot test; Phase III to include the action collection of data from a sampling of 20 states, compilation and analysis of that data and projections therefrom. In essence the solicitation calls for the identification and study of "high payoff action items" in the various

"target areas" developed by NHTSA. "Action items" are identified in the solicitation as "activities, projects, training, or facilities which, if implemented into the highway safety effort, would have impact on fatality and accident reduction." "Target areas" are defined as "significant problem areas or major program areas where there is high potential for impact on fatality and accident reduction." The list of suggested target areas included as an attachment to the solicitation includes the following: roadway improvement programs, driver behavior improvement programs, problem driver control programs, traffic engineering services, etc.

Proposals were received on October 1, 1975, from a total of nine firms which offered to perform the study for amounts ranging from some \$383,000 to \$1,160,190. Based on initial evaluation of those proposals by the technical evaluation team, the following four firms, listed in order of their technical ranking, were found to be technically acceptable: PRC, Arthur Young & Co. (AY & Co.), Stanford Research Institute (SRI) and RTI. After initial discussions and submission of revised technical and cost proposals on November 12, 1974, SRI's proposal was determined to be outside the competitive range based on its excessive cost proposal.

Between November 21 and 25, 1974, final negotiations were held with PRC, RTI and AY & Co., and on November 28, 1974, best and final offers were received from all three firms. While the revised proposal submitted by AY & Co. was ranked substantially higher than either that of PRC or RTI in terms of technical merit, that firm's proposal was not selected for award inasmuch as its cost proposal was more than \$100,000 in excess of the cost proposals of the other two firms.

Final evaluation of the best and final offers submitted by PRC and RTI resulted in a reranking of those two firms, with RTI receiving a technical score of 766 as compared to PRC's lower score of 659. RTI's cost proposal of \$589,641 exceeded PRC's lesser price of \$562,292 by \$27,349. Award was made RTI based on its higher technical ranking and the relatively minor difference in its cost proposal. NHTSA explains that the lower rating given PRC's final proposal over its initial proposal is due to the fact that its initial proposal was unclear as to how the safety needs projections required by the study would be developed and how data collection would be accomplished. The record indicates that the clarifications provided

by PRC in these areas during negotiations and in its best and final offer--particularly with respect to its methodology and the number of man-hours of effort proposed for data collection--resulted in the reduction of its technical score.

PRC takes issue with the correctness of the Government's assessment of its proposal, explaining that while it was advised during negotiations that the 8,400 man-hours of data collection effort it originally proposed was substantially below the Government's estimate of from 12,000 to 18,000 man-hours of data collection effort, it nevertheless remains confident of the sufficiency of the 8,400 man-hours figure, given its particular approach to data collection and its particular background. PRC explains the basis for its protest as follows:

"The primary questions in this protest concern whether or not the procurement agency fairly and honestly evaluated the PRC team's proposal, particularly as that proposal pertains to man-hours assigned to the data collection efforts of the contract.

"The PRC team is a fully qualified group of professional service and research firms who have done considerable work in the areas described in the RFP. The careful estimate of man-hours which these very experienced companies on the PRC team put together was entitled to great weight, particularly when the reasons for it were clearly and elaborately explained, both orally and in writing, to the procurement agency.

"The Government's own estimate, on the other hand, has never been explained. The 'analysis', if in fact one exists, has never surfaced. The GAO * * * should specifically request that NHTSA or FHWA furnish it and PRC with any information, reports or data which supports the 12,000 of 18,000 man-hours level of work on this contract * * *."

In support of its protest, PRC cites 47 Comp. Gen. 336 (1967), as cautioning against undue reliance on Government estimates, and it points to our decision in 50 Comp. Gen. 16 (1970) as holding that a Government estimate should not be used to arbitrarily exclude firms whose offers are either in excess of or lower than a Government

estimate. Further explaining its attempts to reassure NHTSA that it could perform the study based on the level of data collection effort proposed, PRC states that it even offered to perform the contract on a firm fixed price basis.

NHTSA explains that its estimate of the number of man-hours thought to be necessary for the Phase III data collection effort was not set forth in the RFP inasmuch as the objectives of the study could be achieved through various approaches, each requiring a different level of data collection effort. Procurement officials initially felt that setting forth an estimate of man-hours in the solicitation would elicit "normalized" proposals--that offerors would find themselves restricted in terms of approach. However, on September 12, 1974, after having reconsidered that position, NHTSA prepared a "hand-out" which was distributed at the preproposal conference. That hand-out indicated NHTSA's assumption that a contractor would use 4 or 5 man teams in each sample state and would allocate about 2 weeks in state level agencies and from 2 to 4 weeks at local level jurisdictions. NHTSA explains that based on this information and given the fact that the study sample was to include 20 states, offerors could readily have projected high and low limits for data collection effort as follows:

<u>Low Limit</u>		<u>High Limit</u>	
2 weeks	State level agencies	2 weeks	
+ 2 weeks	Local level jurisdictions	+ 4 weeks	
<u>4</u>	Total weeks	<u>6</u>	
x 4 men	Team size	x 5	
<u>16</u>	Man-weeks per state	<u>30</u>	
x 40	Hours per week	x 40	
<u>640</u>	Man-hours per state	<u>1220</u>	
x 20	States	x 20	
<u>12,800</u>	Total man-hours	<u>24,000</u>	

NHTSA further explains that "prospective offerors could have determined that the low limit would have been applicable to small states and that the high limit could have been applicable to large states. Offerors could have recognized that all the states within the sets were neither large nor small, and could have developed a realistic number of man-hours that would have been appropriate for the mix of state sizes."

After initial evaluation of all proposals PRC was contacted by telephone and was asked to provide a detailed breakdown of labor effort by task, to indicate how many interviews per state were contemplated, and to clarify the fact that its proposal appeared to include less than one-half the data collection effort of from 12,000 to 18,000 man-hours contemplated by the Government. While PRC's proposal was initially ranked highest by one point in technical merit of the nine proposals received, the October 31, 1974, report from the evaluation team points out the above-indicated areas of concern and that the proposal is weak in specifying how final projections will be developed and how data collection will be accomplished. However, the initial report of the team does recognize, as PRC claims, that its proposal demonstrates a sufficiency of organization structure to perform the study.

While the proposal of RTI was initially ranked last among the four technically acceptable offers received and, like PRC's, was found lacking in sufficient detail and description of methodology and procedures, the evaluation team found the strength of its proposal to lie, in part, in a "sound organizational structure with an outstanding depth of experienced personnel in the Highway Safety field." In addition, the team found the proposal to indicate that RTI had "good experience in data collection, cost evaluation, program evaluation and data analysis."

By amendment to its proposal dated November 12, 1974, PRC undertook to respond to NHTSA's inquiries concerning its proposed allocation of effort for data collection, PRC explained that its estimate of 8,400 hours of data collection effort was arrived at based on the assumption that a total of 3 weeks collection effort would be spent in the five larger states of the sample and that two weeks would be expended in each of the remaining 15 states. In response to NHTSA's inquiry concerning the number of interviews contemplated per state, PRC stated:

"Without attempting to dodge the question, NHTSA will recognize that it is difficult to specify exactly how many interviews will be conducted per state until an approved sampling plan is developed. Obviously, the number of interviews conducted in a large state (e. g. Texas) will be more than those conducted in a small state (e. g. Utah). However,

the total number of interviews to be conducted can be estimated because of resource constraints. Therefore, using a lower bound of 2.7 interviews per man, per day, and an upper bound of 4.0 interviews per man, per day, it is estimated that a minimum of 2,835 and a maximum of 4,200 interviews will be conducted. It is more likely that around 3,300 interviews will be conducted. One must allow time for examination of files, collection of documents, interview cancellations, travel time, and so forth. Given this logic, we can reasonably expect that our field collection staff will conduct--on the average--roughly 174 interviews per state."

The cost evaluation team's review of the revised proposals submitted indicates that PRC's amendment to its proposal and its responses to NHTSA's specific inquiries, as discussed above, did little to reassure NHTSA of PRC's ability to perform a study of the completeness required. Noting that PRC had proposed a total contract effort of 18,509 man-hours, including 8,400 man-hours for data collection, while RTI had proposed a total effort of 30,676 man-hours, including some 13,440 man-hours for data collection, the cost team reiterated the technical evaluation team's concern that "performance in the completeness proposed by PRC cannot be obtained within the 18,509 hours proposed." Addressing PRC's initial revision to its proposal, the technical evaluation team noted:

"While it is difficult to determine precisely the specific effort needed for data collection, a Government estimate was prepared to indicate the level of effort that was contemplated for this task. This Government estimate was based on the need to address the maximum number of Action Items within the constraints of time and resources. There are five principal disciplines involved in the suggested target areas: enforcement, education, engineering, traffic records management, and vehicle measures and analysis. Another factor involved in the Government estimate was the time available, which appeared to be approximately 4 or 5 months for 20 states. It was further assumed that 4 teams of 4 or 5 members was the practical maximum

a consultant should be called on to assemble. With these factors, it was a direct calculation to estimate that each State would have a team of 4 or 5 members 2 weeks at the State level and 2 to 4 weeks in local jurisdictions.

* * * * *

"The offeror does not appear to understand the purpose of the Government provided estimate for data collection. An analysis of PRC's estimate of interviews per State * * * indicates that only 15 percent of the data collection effort is contemplated for intrastate travel, research to obtain information from files and records, completion of questionnaires, cancelled appointments, sickness, and other unforeseen problems. In our opinion this is not realistic. As the number of interviews proposed remains constant, we can only conclude that this lower level of data collection effort would seriously reduce the number of action items that could be studied relative to the number possible with the Government's contemplated level of effort."

Following its receipt of the first revision to proposals, the record indicates that NHTSA revised its internal estimate of the number of man-hours required for data collection based, at least in part, on information obtained during evaluation. While its original high limit estimate was based on 6 weeks of effort per state, the revised estimate was based on a median range of 5 weeks. NHTSA's internal memorandum of November 21, 1974, reflecting this change carries the notation that "this revised Government estimate is not to be used for comparison with proposals as it reflects information which may have come from offerors themselves."

PRC explains that the terms of its proposal for data collection were the topic of discussion during negotiations conducted November 25, 1974, in the course of which it attempted to explain the efficacy of its "project team approach" and why, given this approach, the 8,400 man-hours of data collection effort it had proposed was sufficient. In addition, PRC indicated that it expected to collect data on from 800 to 1,000 action items. The Government's memorandum of negotiations

indicates that among the questions posed, PRC was asked to explain whether its figure for data collection was based on the number of action items to be addressed and, if it was not, to demonstrate the relationship thereto, and further to describe any unique or special techniques that PRC felt would permit its collection of the necessary data in the limited time it had allocated for that purpose. In responding to those question, PRC explained that its estimate was based on experience with other surveys, the number of interviews to be conducted and its knowledge of the quality of data available.

In its best and final offer submitted November 27, 1974, PRC increased the number of man-hours to be expended on data collection effort to 11,002 and gave the following discussion of the basis for its proposal:

"A particular traffic program may be considered as a group of interrelated activities or sub-elements. For example, an ASAP project generally has activities involving police, courts, prosecution, public information, and treatment. These activities may in turn be sub-divided into distinct actions targeted at achieving program objectives. The PRC data collection effort was based on gathering data on all levels-- programs, activities and action items. Because of this approach the calculation of data collection ratios per action item was obviously not a valid measure and may even be confusing in developing data collection procedures.

"At the oral negotiations, NHTSA provided a more complete description of action items as well as a list of specific examples. An analysis of this information clearly indicates that action items may be viewed as program components in some cases and tasks in other cases. This supports the PRC viewpoint that a data collection effort on a programmatic basis would develop the necessary data to assess the impact of action items. A comparison further shows that the PRC data collection effort is easily sufficient to handle at least 1,000 action items as defined by NHTSA at the oral negotiations."

In analyzing PRC's response, above, NHTSA found it indicative of a "major weakness in understanding the Needs Study concept." While its analysis points out specific deficiencies in PRC's approach, NHTSA's contract and technical representatives, in their report to the Source Evaluation Board summarize their views as follows:

"The PRC statements expose a basic lack of understanding of the data collection purpose and scope. Their aim in data collection is very general whereas the RFP is much more specific. The focus of the Needs Study stated in the RFP is on target areas and action items, but PRC states their effort is on a programmatic basis. Using their estimate of 1,000 action items and their average time proposed for data collection per State, the time available for data collection per action item is approximately .51 hours at the State level and .10 hours at the local level. The RFP states the data collection function is to collect estimated total implementation--cost information, personnel requirements, training requirements, hardware and software needs; and estimate fatality and accident reduction impact. Obviously the estimated time or number of action items proposed by PRC is unrealistic."

In its best and final offer PRC also responded to NHTSA's request for information concerning unique or special techniques which it felt would facilitate its collection of data using the lesser amount of effort proposed. Therein PRC explains that it planned (1) to use advance site visits to meet state and local officials, assure arrangements, distribute copies of data collection instruments and collect some data; (2) to devote considerable effort to the format of the data collection instrument to assure that questions can be easily asked and answers quickly recorded; (3) to use a structured interview technique and (4) to use four data collection teams as suggested by NHTSA. Lastly, PRC cites the advantage given it by the fact of its previous experience in similar efforts. Specifically, the proposal states:

"* * * the key to the cost/effectiveness collection of data at the field sites, rests on the prior experience of the PMS Project Team in similar efforts. In this regard, the team has been involved in on-site data collection in over 100 state and local jurisdictions in connection with the NHTSA-sponsored study of Police Traffic Services;

on-site collection efforts in 35 states and over 1,000 agencies in connection with the NHTSA sponsored study of the Indirect Cost of Traffic Efforts; and the recent PMS field survey of over 800 agencies in connection with a U. S. Army Corps of Engineers sponsored study of visitor protection at recreation areas."

Finding that the above-listed techniques did not add significantly of the efficiency of data collection and that certain of those techniques could even be counter-productive, a majority of the technical evaluation team considered PRC's proposal marginal, and upon final evaluation every member of the team lowered the score given PRC's revised proposal over the score given its initial proposal.

By contrast to PRC's best and final offer to expend a total effort of 17,234 man-hours, including 11,332 for data collection, at \$562,292, RTI's best and final offer of \$589,641 reflected its proposal to provide 28,156 man-hours of effort, including 15,170 man-hours for data collection. A review of RTI's best and final offer indicates that it intended to address from 300 to 400 action items through approximately 3,000 interviews. Although its cost proposal was some \$27,000 in excess of PRC's, NHTSA found RTI's overall proposal most advantageous to the Government based on the considerably greater depth of effort proposed and the assurance thereby provided that the study to be furnished would be sufficiently complete.

With regard to PRC's concern that the Government's estimate of man-hours for data collection was arbitrarily deduced and may have been used as a basis for rejecting its proposal without appropriate consideration of its methodology and approach to data collection, we think the above discussion fairly shows neither to have been the case. The record of the competition shows the Government's estimate of man-hours for data collection to have been derived on a basis that is reasonable and consistent with the estimates contained in other proposals received. The fact that that estimate was subsequently changed based on information obtained in the evaluation process tends further to refute any claim of arbitrariness on NHTSA's part.

More importantly, however, the record clearly reflects that NHTSA did not and in fact never intended to use its internal estimate

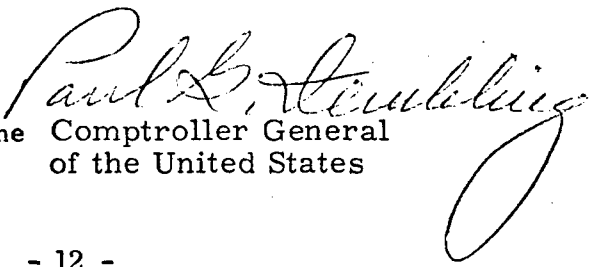
as an absolute benchmark of acceptability of proposals, but recognized that the man-hours essential to performance of the study will necessarily vary depending on the particular offeror's approach. The protester's reliance on our holding at 50 Comp. Gen. 16, 18 (1970) to the effect that a Government estimate in a cost-type contract situation should not be used to exclude offers varying therefrom by some set amount, is inappropriate. The record shows that NHTSA did in fact consider PRC's approach to data collection with a view to validating its apparently low estimate of effort for that task and found its explanation un reassuring.

In view of the foregoing, it appears that NHTSA's determination to make award to RTI notwithstanding its slightly higher cost proposal is consistent with the statement contained in the solicitation's instruction to offerors which, in pertinent part, provides as follows:

"Award will be made to that offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the Government; and who is considered to be responsible within the meaning of the Federal Procurement Regulation 1-1.12. Cost will be a significant factor in the award decision, although the award may not necessarily be made to that offeror submitting the lowest estimated cost. * * * "

Stated in its simplest terms, NHTSA's decision to award the study contract to RTI for \$589,641, reflects its determination that the additional expenditure of \$27,349 by which RTI's cost proposal exceeded PRC's was justified on the basis of RTI's offer of the 10,922 additional man-hours of effort, including 3,838 of data collection effort and the assurance of completeness of the study provided by that additional effort, or rather that the technical/cost relationship offered by PRC's proposal was most advantageous to the Government. In regard to PRC's offer to perform on a firm fixed price basis, we have no basis to question NHTSA's determination that the award of a firm fixed price contract would be inappropriate for the study to be provided.

In view of the foregoing, we find no impropriety in NHTSA's determination to award the Highway Safety Needs Study contract to RTI and, accordingly, the protest of PRC is denied.


For the Comptroller General
of the United States